expired and the amount could not be then in dispute it was open to him to enforce payment. No question of *estoppel* by conduct, in my opinion, arises.

The Comptroller is not limited to one additional assessment but can raise as many as as he likes, see *Cansick* v. *Hochstrasser, supra,* at page 156.

For these reasons therefore I answer the questions in the case stated as follows:—

First question	Yes
Second question	No
Third question	Onus on appellants
Fourth question	No
Fifth question	No
Sixth question	Yes to both (i) and (ii)
Seventh question	Yes

There will be an order remitting the matter back to the Board with a direction that it continue with the hearing in the light of the answers I have given to the questions in the case stated.

Order accordingly.

Solicitors: *Elias Bros.; Laycock & Ong; Rodyk & Davidson.*

SALBIAH & ANOR. v. NANYANG INSURANCE CO. LTD.

[O.C.J. (Gill J.) February 18, 1966]

[Malacca — Civil Suit No. 30 of 1964]

Insurance — Motor insurance — Action to recover damages from insurers of motor car — Motor car transferred under agreement for sale to be followed by hire purchase — Insurance in name of original owner but car in possession of intended hire-purchaser — Whether original owner has insurable interest — Road Traffic Ordinance, 1958, ss. 75 and 80.

In this case the facts were that one Lau Teck Siew a partner in a firm which dealt in second hand cars became the registered owner of a motor car bought by the partnership. The insurance policy of the car which was insured with the defendant company was transferred to and vested in Lau Teck Siew. Subsequently on February 9, 1961 an agreement was entered into with one Karim under which Karim obtained possession of the car on payment of a deposit of $1,000 and a promise to pay the balance of $2,400. The agreement provided that in the event of failure to pay the balance, the "vendor" was to have the right to seize the car and forfeit the deposit. It was intended that there would be a hire-purchase agreement relating to the car and this was signed on March 17, 1961, when ownership of the car was transferred to a finance company. On March 8, 1961, the car driven by Karim was involved in an accident as a result of which the 1st plaintiff sustained injuries. The plaintiffs obtained judgment against Karim in the sum of $2,228 and costs and they sought to enforce this judgment against the defendants, the insurance company. The defendants denied liability on the ground that Lau Teck Siew had sold the car to Karim and therefore the accident was not covered by their policy of insurance.

Held: (1) the agreement in this case was a conditional contract of sale and Lau Teck Siew was the owner of the car at the time of the accident and he had an insurable interest in it;

(2) at the time of the accident the car was being driven by Karim on the implied order or with the implied consent and permission of Lau Teck Siew and therefore the defendants were liable under their policy of insurance.

Cases referred to:—

(1) *Rogerson* v. *Scottish Automobile and General Insurance Co. Ltd.* [1931] All E.R. Rep. 606.

(2) *Tattersall* v. *Drysdale* [1935] 2 K.B. 174.

(3) *Peters* v. *General Accident Fire and Life Insurance Corporation Ltd.* [1938] 2 All E.R. 267.

(4) *Yeoman Credit Ltd.* v. *Apps* [1962] 2 Q.B. 508 at p. 522.

CIVIL SUIT.

H. E. Cashin for the plaintiffs.

Keith Sellar for the defendants.

Cur. Adv. Vult.

Gill J.: In this action the plaintiffs are seeking under the provisions of section 75(3) and section 80(1) of the Road Traffic Ordinance, 1958 to recover from the defendants as the insurers of motor car SR 4805 the benefit of a judgment which they obtained in the High Court at Malacca against one Karim bin Mohamed Nor alias Hashim bin Mohamed Nor in respect of damages for personal injuries sustained by the first plaintiff in a road accident involving the said car when it was being driven by the said Karim.

The defendants became insurers of the car by their policy of insurance No. PC/4711/C/60 dated the 1st September, 1960 and issued in the name of the then owner of the car named Ang Hway Sim for a period of one year from the date of issue. The policy contained the usual agreement on the part of the insurer to indemnify the insured in the event of any accident caused by or arising out of the use of the motor car against all sums including claimants' costs and expenses which the insured shall become legally liable to pay in respect of death of or bodily injury to any person. There was a further clause in the policy extending the indemnity to any authorised driver.

As from 3rd November, 1960 the interest in the policy was transferred to and vested in one Lau Teck Siew of 54 Short Street, Singapore on his becoming the owner of the car. Lau Teck Siew's proposal and declaration dated 3rd November, 1960 were deemed to be incorporated in and to be the basis of the contract, and he was to be deemed the insured.

On the date of the purchase of the car Lau Teck Siew was a partner in Sin Thye Hin Trading Co. which was carrying on business both in Singapore and Malacca as dealers in second-hand motor cars. The car was purchased in Singapore and registered in the name of Lau

Teck Siew, although the purchase price was paid by the company. After the purchase the car was sent to the company's office at Malacca to be sold there by the manager of the company named Ng Kah Chee. Karim obtained possession of the car from the Sin Thye Hin Trading Co. at Malacca on 9th February, 1961 under an agreement which reads as follows:—

"Agreement made this 9th day of February, 1961 between.....(hereinafter called the vendor) and Mr. Karim bin Mat Nor (hereinafter called the purchaser).

That the vendor agreed to sell and the purchaser agreed to purchase Opel Rekord Car No. SR 4805 model 1956 insurance expires on.....for the sum of dollars three thousand four hundred ($3,400).

The first to be paid by the purchaser the sum of dollars one thousand only ($1,000) as deposit on delivery will be paid of the car and the balance of dollars two thousand four hundred on or before 30/2/61.

In the event of the purchaser's failing to pay the balance, the vendor shall have the right to seize the car and forfeit the deposit paid by the purchaser.

The purchaser shall be responsible for any accident or summons during the car is in his custody."

On or about 8th March, 1961 the first plaintiff while walking along Kampong Balai, Melaka Pindah, at or near 16¼ milestone in the State of Malacca, was knocked down by the said motor car which was being driven by Karim. She sustained personal injuries as a result of the accident and the second plaintiff was put to loss and expense. On 20th June, 1963 the plaintiffs brought an action (*vide* Civil Suit No. 62 of 1963) in the High Court at Malacca against Karim to recover damages in respect of personal injuries suffered by the first plaintiff and the loss and expenses incurred by the second plaintiff. Notice of this intended action had been given to the defendants by a letter dated 18th June, 1963 addressed to them by the plaintiffs' solicitors. On 20th December, 1963 the plaintiffs obtained judgment against Karim in the sum of $2,228 and costs which were taxed at $549.55 on 31st January, 1964.

The plaintiffs say that they are entitled to succeed on their claim because the accident took place during the currency of the policy of insurance in the name of Lau Teck Siew and while a certificate of insurance was in full force and effect, and because at the time of the accident the car was being driven by Karim with the permission of and/or under the orders of the said Lau Teck Siew. The defendants deny liability on the ground that Lau Teck Siew sold the car and delivered control and possession of it to Karim in December 1960 without notifying them of the sale and that the transfer of the policy from Lau Teck Siew to Karim was effected only on 15th April, 1961 with effect from 17th March, 1961. They therefore contend that the accident was not covered by their policy of insurance, nor did Karim drive the car as the servant or agent of the then insured or with his permission.

In the circumstances of the case the only issue before the court is whether Lau Teck Siew was in fact the owner of the car on the date of the accident with, of course, the consequential issue as to whether Karim drove the car on the orders or with the permission of Lau Teck Siew. As the happening of the accident, the obtaining of the judgment, the existence of the insurance policy in the name of Lau Teck Siew and his name in the register of the Registrar of Motor Vehicles, Singapore as owner were admitted, I ruled that it was for the defence to begin. The plaintiffs called no evidence.

There is very little controversy about the facts of the case. The evidence on behalf of the defendants is that whenever Lau Teck Siew purchased on behalf of the company a car in Singapore to be sold in Malacca, he got it registered in his name and had the policy of insurance transferred into his name. He then sent the car to Malacca together with the registration card and a transfer form duly signed by him. The company in Malacca had his general permission to sell the car outright or on hire-purchase either direct or through a finance company. This is what happened in the present case, and he did not know what happened to the car until he heard about the accident. As far as he can remember, the company sold the car direct to the purchaser on his paying part of the purchase price. On obtaining the necessary information by telephone from the manager of the company in Malacca, he wrote his letter of 9th July, 1962 to the plaintiffs' solicitors to say that the manager had allowed Hashim bin Mohamed Nor to take the car under some sort of agreement, but at that time he had not seen the agreement which was entered into in Malacca. He has produced the book containing the agreement relating to the alleged sale of the car to Karim (Exhibit D.6) which he calls a temporary sales agreement book.

The evidence of Karim alias Hashim bin Mohamed Nor relating to the circumstances under which he obtained possession of the car is as follows. In December 1960 he had a Morris Oxford car which he wished to trade in and to purchase a new car. He went to the firm of Sin Thye Hin Trading Co. and saw a salesman called Musa who showed him a secondhand Opel Rekord car bearing No. SR 4805. He became interested in the car and went back to the firm on the following day and saw the Chinese manager, with whom he had a discussion. The manager said that he would pay him $600 for his Morris Oxford and sell the Opel Rekord car to him for about $3,000. He agreed, signed several documents in the English language, handed over

his Morris Oxford car, paid $200 for which he was given a receipt and took away the Opel Rekord car. He was not given copies of any documents which he signed or any other documents, and he was not told that he would be given documents after he had paid the last instalment so as to make him the owner of the car. He was not given any insurance certificate when he took away the Opel Rekord car. He was told that in case he made default in payment for three successive months the company would take the car back. He paid six months' instalment of $135.50 each and obtained a receipt for each payment.

The evidence of Ng Kah Chee, the manager at Malacca, is this. Some time at the end of 1960 motor car SR 4805 was sent to him from Singapore by Lau Teck Siew with instructions to sell it. The car was registered and insured in the name of Lau Teck Siew who held it on trust for the other partners. The witness sold the car to a Malay on hire-purchase although no proper hire-purchase agreement was executed at the time of the sale. The car was sold under an agreement (D.6) which was a temporary sale agreement. According to their system of sale on hire-purchase, the purchaser had to pay one-third of the purchase price as down payment on delivery. In this case the purchaser did not pay the full one-third price. He paid a certain amount and traded in a motor car. The full one-third price was paid by 17th March, 1961 on which date the purchaser entered into a hire-purchase agreement with Messrs. Kiaw Aik Hang Co. Ltd. of Singapore. He witnessed the signature of the purchaser on the hire-purchase agreement (Exhibit D.7) and, having signed it himself on behalf of his company as guarantors, forwarded it to the finance company at Singapore. Until the full one-third purchase price was paid the car belonged to his firm, after which it was transferred to the finance company who paid him the balance of the purchase price and he issued a receipt for it to the finance company.

Chong Sun Kiow, a clerk employed by Kiaw Aik Hang Co. Ltd. of 157, South Bridge Road, Singapore has produced the original hire-purchase agreement in respect of car SR 4805 (D.7), which he says was stamped on 8th October, 1960 at Johore Bahru stamp office, although the date of the hire-purchase agreement was 17th March, 1961. He has also produced the receipt from Sin Thye Hin Trading Co. of Singapore in respect of the money paid by the finance company (Exhibit D.8).

Ng Kah Chee has explained the system which was adopted by him when he sold any car which was sent to him from Singapore. If the car was sold outright he completed the transfer forms already signed by Lau Teck Siew and delivered them together with the car to the purchaser on receipt of the purchase price. If the purchaser paid one-third of the price, an agreement like D.7 was executed, with his company as guarantors. A receipt was issued by his company in the name of the hirer for the one-third price paid to him. The finance company then paid his company the balance of the purchase price and he gave them his company's receipt for it. The registration card, the insurance policy and the certificate of insurance together with transfer forms signed by Lau Teck Siew were handed over to the finance company. Thereafter his company as agents for the finance company went on collecting the instalments from the hirer until the full amount was paid. Where the intending purchaser paid less than one-third of the purchase price, his company entered into an agreement like D.6 with him and remained the owners under the agreement until the full one-third price was received and a proper hire-purchase agreement like D.7 executed in favour of the finance company. If the purchaser did not pay the balance under the agreement D.6, which he could do bit by bit, his company had the right to take back the car. If during the currency of D.6 the purchaser paid the full purchase price, his company would accept it and then there would be no necessity for a proper hire-purchase agreement. His company retained no physical control over the car after parting with possession under D.6.

The question raised in this case is of general interest and considerable importance in the law of motor-car insurance, but the legal principles involved seem to be quite simple. The cardinal principle of insurance law is that an assured person cannot recover unless he has an insurable interest in the subject matter in respect of which the claim is made. *Shawcross* on Motor Insurance (2nd edition) at page 80 says that "an insurable interest exists where the assured stands in some legal relation to the subject matter of the insurance whereby he stands to incur some legal loss if the event insured against occurs." Thus, if an assured person disposes of the insured car by sale or in part exchange for a new car the policy of insurance automatically determines and he ceases to have an insurable interest in the insured car, so that if such insured car is involved in an accident subsequent to its disposal by sale or in part exchange, the assured or any one through him, cannot recover.

In *Rogerson* v. *Scottish Automobile and General Insurance Co. Ltd.*[1] a policy of motor insurance which covered, *inter alia,* claims against the assured for bodily injury "caused to any person or persons by a motor car described in the schedule hereto," further provided that "this insurance shall cover the legal liability as aforesaid of the assured in respect of the use by the assured of any motor car (other than a

hired car), provided that such motor car is at the time of the accident being used instead of the insured car." The assured part-exchanged the motor car described in the schedule for a new car of the same make, but his brokers, despite his instructions to them to do so, failed to transfer the insurance. On a claim by the assured for indemnity against claims by a person injured by the new car, the assured contended that the new car was "being used instead of the insured car." It was held that the policy depended on the hypothesis that there was, in fact, an insured car, and, the assured's rights in respect of the car described in the schedule to the policy having ceased when he sold it, the subsequent use of the new car was not covered by the policy.

In *Tattersall* v. *Drysdale* [2] it was held that "where in a motor insurance policy a particular car is specified as the subject of insurance, and by a clause in the policy its benefits are extended to the assured when driving another car with the owner's permission, the interest of the assured ceases when he parts with the specified car, and the extending clause falls together with the rest of the policy."

I now come to the case of *Peters* v. *General Accident Fire & Life Assurance Corporation, Ltd.*[3] on the authority of which the defendants in the present case would appear to rest their case. In that case the vendor of a motor van insured by the defendants handed over the insurance policy with the van to the purchaser. The policy contained the usual clause extending the cover to any person driving with the consent or permission of the insured. The plaintiff, who had been injured by the van after the sale had been completed, obtained a judgment against the purchaser, and sought to recover the damages he had been awarded from the defendants under the provisions of the Road Traffic Act, 1934, section 10. The motor van was sold for £10, of which £5 was paid when the van was handed over and the remaining £5 after the occurrence of the accident. It was held (i) that at the time of the accident, the purchaser could not be said to be driving the van by the orders or with the permission of the vendor, as the van was then the purchaser's own property and (ii) that the insured was not entitled to assign his policy to a third party, because an insurance policy is a contract of personal indemnity, and the insurers cannot be compelled to accept responsibility in respect of a third party who may be quite unknown to them.

It seems clear from the authorities that if, by the agreement dated 9th February, 1961 which was entered into between Karim and Ng Kah Chee on behalf of Sin Thye Hin Trading Co. (and therefore on behalf of Lau Teck Siew who held the car in trust for the other partners of the firm), the property or the whole of the interest in the car passed to Karim, the defendants are not liable because on the date of the accident Lau Teck Siew had no insurable interest in the car. The question is: was this document intended to be a contract of sale or an agreement to sell or some other kind of contract? In this connection *Halsbury* (3rd edition) Vol. 34 starting at page 19 says:

> "Where under a contract of sale the property in the goods is transferred from the seller to the buyer, the contract is called a 'sale'; but where the transfer of the property in the goods is to take place at a future time, or subject to some condition thereafter to be fulfilled, the contract is called an 'agreement to sell'. Sale includes a bargain and sale as well as a sale and delivery. An agreement to sell becomes a sale when the time elapses, or the conditions are fulfilled, subject to which the property in the goods is to be transferred.
>
> An agreement to sell, or, as it is often called, an executory contract of sale, is a contract pure and simple, whereas a sale, or, as it is called for distinction, an executed contract of sale, is a contract plus a conveyance. Thus, by an agreement to sell a mere *jus in personam* is created, by a sale a *jus in rem* is transferred. Where goods have been sold, and the buyer makes default in payment, the seller may sue for the contract price, but where an agreement to buy is broken, usually the seller's only remedy is an action for unliquidated damages. Similarly, if an agreement to sell is broken by the seller, the buyer has only a personal remedy against the seller. The goods are the property of the seller and he can dispose of them. They may be taken in execution for his debts, and if he becomes bankrupt they pass to his trustee in bankruptcy.
>
> If, however, there has been a sale, and the seller breaks his engagement to deliver the goods, the buyer has not only a personal remedy against the seller, but also the usual proprietary remedies in respect of the goods themselves, such as the actions for conversion and detinue; and if there is an agreement for sale and the goods perish, the loss as a rule falls on the seller, while if there has been a sale the loss as a rule falls upon the buyer."

It has been argued by counsel for the defendants that the document D.6, if it is taken to mean what it says on the face of it, constituted a contract of sale whereby the property in the car passed to Karim on its execution and the delivery of the car to him. He finds further support for this argument in Ng Kah Chee's testimony that he would have accepted the balance of the purchase price if Karim offered to pay it at any time after the date of the agreement so as to conclude the transaction. In my opinion, that piece of evidence by Ng Kah Chee is a double-edged weapon, because it lends equal if not greater force to the contrary argument that the contract of sale was conditional upon the payment of the balance of the purchase price. Another point which may be said to be in favour of the defendants, although this was not expressly taken, would be that the fact that no documents were handed to Karim at the time of the agreement does not mitigate against the transaction being a sale. After all, the registration card is not a document of title and the

handing over of the insurance policy is not a condition precedent to constitute a valid sale. However, the non-delivery of such documents with the car may well be construed to mean that they were being withheld pending the fulfilment of a condition which, in a case where a part of the purchase price has been paid, can only be the payment of the balance of the purchase price.

The important thing is to ascertain the nature and effect of the document. I have therefore to consider not only the text of the agreement but also such other evidence as helps to explain its nature and effect, so long as such other evidence does not seek to contradict, vary, add to or subtract from its terms. The task of the court is to extract the intention of the parties both from the terms of their written agreement and from the circumstances which surround and follow it. Thus the evidence relating to the circumstances under which Karim obtained possession of the car is relevant and therefore admissible. The criterion is the true construction of the agreement between the parties. *Halsbury* (3rd edition) Vol. 34 at page 21 says:

"A contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a money consideration, called the price; and although a contract may be clothed with the form of a contract of sale; or may contain terms implying that it is a contract of sale, if, on its true construction, it appears to be some other kind of contract, effect will be given to it as such, and the provisions of the Sale of Goods Act, 1893, will not apply. Unless the context or subject matter of that Act otherwise requires, a buyer means a person who buys or agrees to buy goods. Accordingly, there must be a consent to buy as well as a consent to sell goods, otherwise the agreement, unless void for want of consideration, is a mere option to buy, and the Act is not applicable thereto until the option to buy is exercised and the contract of sale thus created. A contract for sale may be between one part owner and another and may be absolute or conditional."

It is to be observed that the agreement in the present case provided that "in the event of the purchaser's failing to pay the balance, the vendor shall have the right to seize the car and forfeit the deposit paid by the purchaser." That clause in the agreement, in my judgment, clearly indicates that there was no intention on the part of the vendor to part with property in the car to the purchaser until the full purchase price was paid. It seems clear therefore that the contract here was an "agreement to sell" or a conditional contract of sale, the condition to be fulfilled being the full payment of the purchase price. This is further borne out by the evidence of Ng Kah Chee that the car was sold on hire-purchase and that D.6 was a temporary sale agreement. There is also the letter dated 19th July, 1962 from Lau Teck Siew to the plaintiffs' solicitors in which it was stated that the car was lent to Mr. Hashim bin Mohamed Nor on his permission on 7th March, 1961. It is true that Lau Teck Siew did not know the terms of the agreement between his company and Hashim bin Mohamed Nor when he wrote that letter, but he has stated that he wrote it after obtaining the necessary information by telephone from the manager at Malacca. In the face of that evidence I do not see how it can be argued that Karim became the owner of the car on 9th February, 1961.

There is abundant evidence in this case as to the nature of the transaction between the parties in relation to the car. As I have stated above, Ng Kah Chee calls it a sale on hire-purchase. In view of what happened after the agreement was signed and the car delivered to Karim, it would not be inappropriate to call the agreement an incipient hire-purchase agreement. Karim has testified that he signed a number of documents on 9th February, 1961. All the indications are that he signed the proper hire-purchase agreement (D.7) on the same day, although the other parties to that hire-purchase agreement did not sign it until 17th March, 1961 when the trading company transferred the car to the finance company. Karim, of course, knows very little about this hire-purchase agreement. This is not surprising. As stated by Lord Justice Harman in *Yeoman Credit, Ltd.* v. *Apps* [4]:

"The difficulty and the artificiality about hire-purchase cases arise from the fact that the member of the public involved imagines himself to be buying the article by instalments from the dealer, whereas he is in law the hirer of the article from a finance company with whom he has been brought willy-nilly into contact, of whom he knows nothing and which, on its part, has never seen the goods which are the subject-matter of the hire."

In view of what I have stated above and in view of the fact that the trading company regarded themselves as the owners of the car until they transferred it to the finance company with whom Karim was brought willy-nilly into a contract of hire-purchase, Lau Teck Siew had an insurable interest in the car on the date of the accident and the car was being driven by Karim on the implied orders or with the implied consent and permission of Lau Teck Siew. The defendants are therefore liable under their contract of insurance. There will be judgment for the plaintiffs for $2,777.55 together with interest as prayed and costs.

Judgment for the plaintiffs.

Solicitors: *Murphy & Dunbar; Sault, Keith Sellar & Co.*

KERSAH LA'USIN v. SIKIN MENAN

[O.C.J. (Raja Azlan Shah J.) February 18, 1966]

[K.L. — Civil Suit No. 151 of 1964]

Land Laws — Sale of land — Unregistered transfer — Purchaser obtaining a right in contract — Death of purchaser — Whether right devolves on administrator — Laches.